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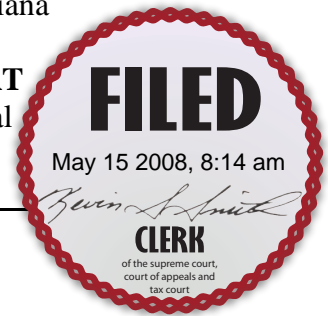
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**IN THE
COURT OF APPEALS OF INDIANA**

LORD DREZDEN,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0711-CR-609

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William J. Nelson, Judge
Cause No. 49F07-0504-CM-64571

May 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Statement of the Case

Lord Drezden appeals his conviction for Resisting Law Enforcement as a Class A misdemeanor.¹ We reverse.

Issue

The sole issue presented is whether the State proved Drezden's guilt beyond a reasonable doubt.

Facts

In April of 2005, Troy Cobb went to Drezden's residence to repossess a vehicle belonging to Drezden's housemate. Drezden answered the door but was uncooperative. Cobb left and returned one week later at around 7:30 or 8:00 p.m. This time Drezden came to the door with a three-foot sword in his hand. He waived the sword in front of Cobb. When Cobb questioned Drezden about the vehicle to be repossessed, Drezden told him to leave or he would "carve [him] up." Tr. 14. Drezden followed Cobb to the street, dragging the sword behind him. From his car on the street, Cobb called the police, and Drezden returned to the house.

Officer Robert Turner, then Deputy Turner of the Marion County Sheriff's Department, arrived first and began talking to Cobb. Deputies Jason Jordan and Robert McNeil² arrived soon thereafter. At some point, Drezden emerged from his house and walked down the driveway. Officers ordered Drezden to stop but he did not respond until

¹ Ind. Code § 35-44-3-3.

² In the record, the deputy's surname is spelled both "McNeil" and "McNeal." For consistency, we use the spelling as it appears in the information.

officers drew their weapons. Upon command, Drezden lifted his shirt, which revealed a knife on his hip. Officer Turner took the knife and placed it on the trunk of a nearby car.

The officers decided to handcuff Drezden for officer safety. One grabbed Drezden by the arm, but Drezden “snatched his arm away.” Tr. 22. Drezden was placed against the car but would not give the officers his arms. Officer Turner thought that Drezden was attempting to reach the knife on the trunk and a struggle ensued. An officer attempted to taze Drezden but accidentally struck Deputy McNeil instead. Officer Turner and Deputy Jordan eventually subdued Drezden and handcuffed him.

The State charged Drezden with resisting law enforcement as to Deputy McNeil only, and with disorderly conduct.³ At the trial held over two years later, the State called Cobb and Officer Turner as witnesses; Deputy McNeil did not testify. After the State rested, Drezden moved for an “involuntary dismissal” of both charges. Tr. 33. In part, Drezden argued that it was unclear that it was Deputy McNeil whom Drezden allegedly resisted. The court granted the motion as it related to disorderly conduct, but denied it as to resisting law enforcement.

During closing argument, Drezden renewed his motion to dismiss, claiming the State did not prove forcible action against Deputy McNeil. The trial court again denied the motion, and found Drezden guilty of resisting law enforcement. In so doing, the court explained:

There was testimony from Officer then Deputy Turner that prior to the tazing there was a struggle, which was one (1) word that I heard. A wrestling match is another description that I heard and the two (2) officers were on the ground with Mr. Drezden. . . . A wrestling match indicates that there [were] people

³ Ind. Code § 35-45-1-3.

rolling around on the ground. . . . Had it just stopped at pulling away from handcuffing, . . . that is not a forcible resist but when it leads to a wrestling match, I think that's a forcible resist"

Tr. 54-55. Drezden now appeals.

Discussion and Decision

When reviewing the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." Id. When confronted with conflicting evidence, the appellate court considers it "most favorably to the trial court's ruling" and we affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (citations omitted).

Indiana Code section 35-44-3-3(a)(1) provides that "[a] person who knowingly or intentionally . . . forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties; . . . commits resisting law enforcement, a Class A misdemeanor[.]" The information alleged that Drezden "did knowingly and forcibly resist, obstruct, or interfere with Dep. R. McNeil, a law enforcement officer . . . while said officer was lawfully engaged in the execution of his duties as a law enforcement officer." App. 17. The word "forcibly" modifies all three verbs. Spangler v. State, 607 N.E.2d 720, 723 (Ind. 1993). One "forcibly resists" law enforcement "when strong, powerful, violent means are used to evade a law

enforcement official's rightful exercise of his or her duties." Id. Further, the identity of the officer is essential to the charge and must be proved. See Whaley v. State, 843 N.E.2d 1, 9-10 (Ind. Ct. App. 2006) (citing Bonner v. State, 789 N.E.2d 491, 493-94 (Ind. Ct. App. 2003)), trans. denied.

Drezden does not claim that Deputy McNeil acted outside the "rightful exercise of his duties." Rather, he argues that the State failed to prove that he forcibly resisted, obstructed or interfered with Deputy McNeil's duties. Cobb testified that there were three officers, one approached Drezden, and two "just kind of stood in the background." Tr. 16. Tr. 6, 15. Cobb further testified about an officer grabbing Drezden's arms, "two" later trying to hold him, and "they" trying to get him to lie on his stomach. Tr. 16-17. Officer Turner was "one (1) of the ones that got him down on the ground or got on top of him. . . . [but] there was a lot of confusion at that point." Tr. 17. Although Cobb described a "wrestling match," during which Drezden "ended up against the car," he did not know if Drezden "went down on his own or not." Tr. 18.

Officer Turner confirmed that "[o]ne of the other officers" grabbed Drezden by the arm, at which point Drezden "snatched his arm away." Tr. 22. He also stated that "we grabbed him," "we struggled with him to get him handcuffed," "we grabbed him again," and "we wrestled again." Tr. 23. On cross-examination, Turner first identified Deputy McNeil and Deputy Jordan as the officers who "assisted" him. Tr. 24, 30. But Turner explained that McNeil was "out of the picture" after he was tazed, leaving Turner and Jordan "to deal with handcuffing" Drezden. Tr. 31.

We agree with the trial court that the evidence establishes the use of force as defined in Spangler. Drezden “snatched” his arm away from an officer, struggled, and wrestled with them. See J.S. v. State, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006) (affirming delinquency adjudication based on resisting law enforcement where juvenile flailed her arms, squirmed her body, pulled, jerked, and yanked away from officer), trans. denied; Johnson v. State, 833 N.E.2d 516, 518-19 (Ind. Ct. App. 2005) (affirming conviction for resisting law enforcement where defendant turned and pushed away with his shoulders, then “stiffened up,” requiring officers to exert force to place him inside transport vehicle). But the State alleged forcible action against Deputy McNeil only. The record reveals that Deputy McNeil was present during the fracas, but it does not establish beyond a reasonable doubt that it was he from whom Drezden “snatched” his arm or that it was he who struggled and wrestled with Drezden before McNeil was tazed. Without more, we can only speculate regarding Drezden’s actions against McNeil.

In sum, the evidence does not demonstrate beyond a reasonable doubt that Drezden acted with the required force against Deputy McNeil. Therefore, we reverse Drezden’s conviction for resisting law enforcement. See O’Connor v. State, 590 N.E. 145, 148 (Ind. Ct. App. 1992) (reversing conviction where charging information alleged resistance against one officer but evidence adduced at trial supported a charge that defendant resisted another officer).

Reversed.

FRIEDLANDER, J., and KIRSCH, J., concur.